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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/890,172	07/25/2001	Oren Globberman	34982	7714
67801 7590 05/24/2007 MARTIN D. MOYNIHAN d/b/a PRTSI, INC. P.O. BOX 16446 ARLINGTON, VA 22215			EXAMINER PREBILIC, PAUL B	
			ART UNIT 3738	PAPER NUMBER
			MAIL DATE 05/24/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

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## Office Action Summary

Application No.

09/890,172

Applicant(s)

GLOBERMAN ET AL.

Examiner

Paul B. Prebilic

Art Unit

3738

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 27 February 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) See Continuation Sheet is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 59,83,85,93,98-103,116-118,220,221 and 226 is/are allowed.
- 6) ☒ Claim(s) 13-15,26,28,29,97,212 and 227 is/are rejected.
- 7) ☒ Claim(s) 25,32,69,72-74 and 96 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

Continuation of Disposition of Claims: Claims pending in the application are 13-15,25,26,28,29,32,59,69,72-74,83,85,93,96-103,116-118,212,220,221,226 and 227.

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The indicated allowability of claims 13-15, 26, 28, 29, 97, 212, and 227 is withdrawn in view of the reference(s) to Hofmeister. Rejections based on the newly cited reference(s) follow.

### ***Claim Objections***

Claims 25, 26, 28, 29, 32, 69, 72-74, and 96-97 are objected to because of the following informalities:

With regard to claims 25, 26, 28, 29, 69, and 72-74, line 14 of each claim, the language "comprising an inner bolt" is confusing since it appears that the extension has this feature. The Examiner suggests inserting "said spacer further" in order to overcome this objection.

With regard to claim 25, line 16, the "protrusions" should be singular "protrusion" in order to be grammatically correct.

With regard to claim 32, line 18, "comprises" should be changed to "comprise" to be less grammatically awkward.

With regard to claims 96 and 97, the language "spacer comprises" is confusing since the preamble ended on line 1 of the claim with the same language. The Examiner suggests replacing this language with "spacer is formed of" in order to overcome this objection.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 13-15, 26, 28, 29, 97, 212, and 227 are rejected under 35 U.S.C. 102(b) as being anticipated by Hofmeister (US 5,725,341). Hofmeister anticipates the claim language where the end-cap as claimed is the flange (2) of Hofmeister (see column 4, lines 24-62 and Figure 1), the tube as claimed is tube (1), the slits as claimed are between folding element (6) and flaring element (7), the compressed state as claimed is best seen in Figures 3 and 4. The fastener is inherently adapted to support vertebral plates at least in a cadaver, small mammal, or an individual lying down. The greater stress capacity as claimed is inherent to the elements (6) of Hofmeister as compared to elements (7).

With regard to claim 15, when the cap includes the tube section proximal to the folding element (6), then the claim language is fully met.

With regard to claim 26, the head includes screw head (8) with flange (2).

With regard to claim 28, when the "inner thread" is understood to be the thread inside the tube (1), the claim language is met. The pole element as claimed is the plug (4) of Hofmeister.

With regard to claims 97 and 227, the adhesive (5) ensures that the fastener maintains or remembers the deformation given it during compression and thus, the adhesive is the shape memory material as claimed.

With regard to claim 212, Applicant is directed to Figure 4.

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***Allowable Subject Matter***

Claims 25, 32, 69, 72-74, and 96 are objected to but would be allowable if rewritten to eliminate the objectionable language.

Claims 59, 83, 85, 93, 98-103, 116-118, 220, 221, and 226 are allowed over the prior art of record.

***Conclusion***


Applicant should specifically point out the support for any amendments made to the disclosure, including the claims (MPEP 714.02 and 2163.06). Due to the procedure outlined in MPEP 2163.06 for interpreting claims, it is noted that other art may be applicable under 35 USC 102 or 35 USC 103(a) once the aforementioned issue(s) is/are addressed.

Applicant is respectfully requested to provide a list of all copending applications that set forth similar subject matter to the present claims. A copy of such copending claims is respectfully requested in response to this Office action if the application is not stored in image format (i.e. the IFW system) or published.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Paul B. Prebilic whose telephone number is (571) 272-4758. He can normally be reached on 6:30-5:00 M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on 571-272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Paul Prebilic  
Primary Examiner  
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